



DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 761, 762, 764, 765, 766, 768, and 785

[Docket No. FSA-2019-0005]

RIN 0560-AI43

Farm Loan Programs; Direct and Guaranteed Loan Changes, Certified Mediation Program, and Guaranteed Loans Maximum Interest Rates

AGENCY: Farm Service Agency, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) amends the Farm Loan Programs (FLP) regulations to implement certain provisions authorized by the Agricultural Improvement Act of 2018 (2018 Farm Bill). This rule revises the provisions on FLP loan limits, allows additional flexibility for loan applicants to meet the required farming experience, provides higher guarantee rates for lenders to provide credit to beginning farmers and socially disadvantaged farmers, provides additional program benefits for veterans, provides equitable relief to certain borrowers, allows borrowers who have received debt restructuring with a write down to receive Emergency loans (EM), and expands those issues that are covered under the agricultural Certified Mediation Program. In addition to the 2018 Farm Bill changes, FSA also amends the regulations for loan servicing relating to accepting cash payments and establishing a fee for dishonored checks; these are discretionary changes. The result of these changes will increase loan limits or improve the various loan programs to relieve some restrictions to participation or otherwise encourage participation. This rule also revises the way FSA will establish the maximum interest rates in response to the discontinuing publication of the London Interbank Offered Rate (LIBOR) interest rates. The result of these changes will enable FSA to

provide clearer guidance on maximum interest rates and allow for more consistency across all lenders participating in the guaranteed loan program. In addition, this rule corrects references to supervised credit in the regulations.

DATE: Effective: [Insert date of publication in the *FEDERAL REGISTER*].

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SUPPLEMENTARY INFORMATION:

Background

FSA makes and services a variety of direct and guaranteed loans to farmers who are temporarily unable to obtain private commercial credit. FSA also provides credit counseling and supervision to direct loan borrowers, so they have a better chance for success. FSA loan applicants are often:

- Beginning farmers (BF) and socially disadvantaged (SDA) farmers who do not qualify for conventional loans because of insufficient net worth; or
- Established farmers who have suffered financial setbacks due to natural disasters or economic downturns.

FSA loans are tailored to a farmer's needs and may be used to buy farmland and to finance agricultural production.

2018 Farm Bill Changes

The following amendments made by this rule are non-discretionary and are mandated by the 2018 Farm Bill (Pub. L. 115-334). The majority of the changes were

self-enacting and previously implemented by FSA; this rule updates the regulations to be consistent. The changes to the regulation will:

- Modify the existing 3-year farming experience requirement for Direct Farm Ownership loans (FO) by including additional items as acceptable experience;
- Increase the loan limit to \$600,000 for Direct FOs and increase the loan limit to \$1,750,000 for Guaranteed FOs (these are the base loan limit amounts as specified in the 2018 Farm Bill);
- Increase the Direct Operating loan (OL) limit to \$400,000 and increase the Guaranteed OL limit to \$1,750,000 (these are the base loan limit amounts as specified in the 2018 Farm Bill);
- Allow SDA farmers and BF applicants to receive a guarantee equal to 95 percent, rather than the otherwise applicable 90 percent guarantee;
- Expand the definition of and provide additional benefits for veteran farmers;
- Provide for equitable relief to certain direct loan borrowers acting in good faith who have not complied with loan program requirements after relying on a material action, advice, or non-action from an FSA official;
- Allow borrowers who have received restructuring with a write down to maintain eligibility for an EM; and
- Expand the scope of eligible issues and persons covered under the agricultural Certified Mediation Program.

The Guaranteed FO and Guaranteed OL limits described above are base amounts and have increased as a result of annual inflation adjustments since the 2018 Farm Bill

became effective.¹ In addition to the 2018 Farm Bill changes, FSA is making additional discretionary policy changes including the removal of cash as an option for payments of FSA fees and loan installments and the inclusion of a fee for dishonored payments.

Throughout this rule, any reference to “farm” or “farmer” also includes “ranch” or “rancher,” respectively.

Farm Ownership Experience Requirement

Section 5101 of the 2018 Farm Bill amends section 302(b) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1922(b)) to expand what can be considered when evaluating whether the applicant meets the existing 3-year experience requirement for Direct FOs.

To qualify for a Direct FO, 7 CFR 764.152(d) states that applicants must have participated in the business operations of a farm for at least 3 out of the 10 years prior to the date the application is submitted.

The authorizing legislation in 7 U.S.C. 1922(b)(1) provides FSA with the general authority to substitute the 3-year management experience requirement with other acceptable experience. Prior to this rule, 7 CFR 764.152(d) specified that, for all applicants, 1 of these 3 years could be substituted with one of the following experiences:

- Postsecondary education in agriculture business, horticulture, animal science, agronomy, or other agricultural related fields;
- Significant business management experience; or

¹The loan limit for Guaranteed FOs and OLs are adjusted annually based on the Prices Paid by Farmers Index that is published by the USDA National Agricultural Statistics Service. The loan limits specified in the 2018 Farm Bill are being included in the regulation to show the base amounts. If the loan limit is increased as a result of the annual adjustment, the new loan limit will be announced on the FSA webpage (www.fsa.usda.gov); the loan limit will not be decreased based on the annual adjustment. The current adjusted loan limit for Guaranteed FOs and OLs is \$1,825,000.

- Leadership or management experience while serving in any branch of the military.

Section 5101 expands these allowances, including additional education options, experience with another farm operation, mentorships in day-to-day farm management, honorable discharge from service in the armed forces, and similar experiences for BFs. These options address the different ways in which farmers can learn about managing a farm operation. Given the general authority under 7 U.S.C. 1922(b)(1)(iv), FSA chooses to allow these alternative experiences to apply to all farmers, not just BFs. Section 5101 also allows any two of these allowances to be substituted for 2 years instead of 1 year. Furthermore, this experience requirement may be waived altogether if the farmer has at least 1-year experience as hired farm labor with substantial management responsibilities and has a documented established relationship with an individual who has experience in farming and is a mentor with a Service Corps of Retired Executives (SCORE) program. In the alternative to SCORE, section 5101 allows other individuals or organizations that are committed to mentoring, are local, and approved by the Secretary, to serve as a mentor. FSA will approve documented mentorships on a case-by-case basis and requires mentors to be local individuals who are experienced farmers or farm-related businesspersons able to provide individualized assistance to FSA's borrowers.

This rule amends the eligibility requirement in § 764.152(d) to list the alternatives that can be substituted to meet the farm experience requirement. These additions provide flexibility for BF applicants to meet FSA's Direct FO eligibility rules and access the credit needed to finance farm operations without compromising the managerial standards this requirement was designed to ensure.

FO Limits

Section 5103 of the 2018 Farm Bill amends section 305 of the CONACT (7 U.S.C. 1925) to increase the maximum limits for the Direct and Guaranteed FO

programs. The loan limits have increased to \$600,000 for Direct FOs and \$1,750,000 for Guaranteed FOs.

Prior to the 2018 Farm Bill the loan limit for Direct FOs was \$300,000. Loan limits for Guaranteed FOs, which increase annually based on inflation, were at \$1,429,000 prior to the 2018 Farm Bill.

These increased loan limits are necessary to assist farmers in their ability to respond to the rising costs of farmland. The loan limit changes also will enable more farmers to participate in loan programs. Direct loan limits were last increased in the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill; Pub. L. 110-246). Rising farmland prices since that time have made it increasingly difficult for BF's to purchase farmland within the previous \$300,000 Direct FO limit. Many FSA loans are made in conjunction with financing from commercial lenders; however, as prices continue to rise joint financing arrangements have become less effective to meet demand, particularly from BF's looking to purchase real estate.

This rule amends 7 CFR 761.8 to increase the Direct and Guaranteed FO loan limits. In addition, §761.8(a)(4) and (6) are being amended to increase the limits for combined program assistance reflecting these increased loan limits. The increase will help family farmers better compete with larger, more financially secure farmers when purchasing farmland. The amount of the increase is modest and will not change the type of farm operation receiving FSA loans.

Farm OL Limits

Section 5201 of the 2018 Farm Bill amends section 313 of the CONACT (7 U.S.C. 1943) to increase the loan limits for the Direct and Guaranteed OL programs. The loan limits have increased to \$400,000 for Direct OLs and \$1,750,000 for Guaranteed OL.

Prior to the 2018 Farm Bill the loan limit for Direct OLs was \$300,000. The loan limits for Guaranteed OLs, which increase annually based on inflation, were at \$1,429,000 prior to the 2018 Farm Bill.

The 2018 Farm Bill modified the loan limits to better assist farmers with the increasing cost of operating and family living expenses. Direct and Guaranteed OLs are critical for farmers when purchasing crop inputs, livestock feed, farm equipment, and other operating expenses. Since direct loan limits were last increased in the 2008 Farm Bill, the cost for farm equipment and operating expenses have risen significantly. The additional operating credit available to farmers will assist in responding to this inflation and help them to continue to operate.

This rule amends 7 CFR 761.8 to increase the loan limits for Direct and Guaranteed OLs. The increase in the loan limits will give BF's access to the credit necessary to finance farm operations at today's costs.

95 Percent Guarantee for SDA Farmers and BF Applicants

Section 5306 of the 2018 Farm Bill amends the CONACT by adding section 367 (7 U.S.C. 2008b), which increases the percent of the FSA guarantee for Guaranteed FOs and OLs from 90 percent to 95 percent for a qualified BF or SDA farmer.

Previously, lenders could only receive a 95 percent guarantee (rather than the typical 90 percent) under limited circumstances such as refinancing FSA direct loan debt or participating in the Direct FO Down Payment Loan Program. The increase in the guaranteed loan percentage will give lenders more incentive to extend credit to BF's and SDA farmers, a traditionally underserved segment of farmers.

This rule amends § 762.129 to increase the Guaranteed FO and OL guarantee percentage on loans made to all applicants meeting the definition of "beginning farmer" or "socially disadvantaged applicant or farmer."

Veteran Farmers

Section 12306 of the 2018 Farm Bill amends section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279) and expands the definition of veteran farmer to include veterans who have first obtained status as a veteran during the most recent 10-year period, regardless of their previous farming experience. Specifically, this expanded definition includes any veteran who served in the active military, naval, or air service; and who was discharged or released from service under conditions other than dishonorable; and whose discharge was during the most recent 10-years from the date of application for a direct or guaranteed loan.

Section 12306 also amends section 310E of the CONACT (7 U.S.C. 1935) to include veteran farmers as eligible borrowers to receive direct Down Payment loans, a program previously limited to BF applicants and SDA farmers. To encourage program participation and expand benefits for targeted groups, Down Payment Loan Program participants are not charged a fee when they receive a guaranteed loan in conjunction with a Down Payment loan. This change will ensure guarantee fees are also waived for veteran farmers obtaining a direct Down Payment loan. This rule amends 7 CFR 761.2, 762.130, 764.201, and 764.202 to include these changes.

EMs

Section 5307 of the 2018 Farm Bill amends section 373(b)(2)(B) of the CONACT (7 U.S.C. 2008h(b)(2)(B)) to allow borrowers who have received debt restructuring with a write down to maintain eligibility for an EM.

Prior to the 2018 Farm Bill, borrowers who had received debt forgiveness were ineligible for EM. This change addresses the concern that borrowers who have experienced a disaster, through no fault of their own, are suddenly unable to receive financial assistance and continue their operations. Borrowers who have received prior debt forgiveness through restructuring with a write down still have viable operations and

FSA can now extend assistance to those current and past borrowers who have suffered from a disaster. While there are other ways debt forgiveness can be obtained through FSA, the 2018 Farm Bill expands EM eligibility only to those whose debt forgiveness was in conjunction with an approved debt restructuring plan.

This rule amends § 764.352 to allow borrowers who have received certain debt forgiveness to remain eligible for EM loans, allowing them access to the necessary credit to continue their operations.

Equitable Relief

Section 5305 of the 2018 Farm Bill amends the CONACT (7 U.S.C. 2008a) by adding provisions to provide FSA the authority to consider equitable relief under certain circumstances for FLP borrowers. Previously, there were no statutory provisions for equitable relief for FLP.

FSA is adding the definition of equitable relief to 7 CFR 761.2. Equitable relief, as included in the 2018 Farm Bill, allows FSA flexibility in working with existing borrower loan accounts that are determined to be in non-compliance with loan program requirements, if the borrower acted in good faith and relied on a material action of, advice of, or non-action from an FSA official. Adding the equitable relief definition will provide a common understanding of the term and allow reference to the term in other portions of the regulation while the specific details and process are provided in a newly added part of the regulation.

FSA is adding a new part, 7 CFR part 768, to address the requirements and conditions under which equitable relief can be provided. Under existing regulations, FSA has been required to determine noncompliant accounts as having received unauthorized assistance regardless of cause. Borrowers are then required to immediately repay the loan or convert it to a non-program loan subject to higher interest rates, less favorable terms, and limited loan servicing. Instances have arisen and may arise where borrowers

are negatively impacted due to good faith reliance on a material action, advice, or non-action of an FSA official. The new provision allows FSA to consider relief in these specific instances to allow for more equitable rates, terms, and conditions to be applied to noncompliant accounts. The action, advice, or lack of action should be material to the non-compliance for the reliance to be in good faith as required by the 2018 Farm Bill. For example, it could be determined reasonable, given a certain set of facts, for a borrower to interpret the failure of a farm loan officer to respond to a borrower's statement that the borrower plans to sell FSA collateral as an approval of that action. Depending on the circumstances, the failure of the farm loan officer to advise of the consequences of such an action (non-compliance) in response to that information from the borrower may constitute a material lack of action under the regulation. In contrast, minor customer service issues, such as a failure by FSA to make a courtesy reminder phone call under FSA policy to a borrower would not rise to the requisite level of materiality. Repeated or more significant customer service failures could rise to the level of material failures based on a case-by-case determination, but such customer service issues, especially where disparate levels of service arise across FSA's customer base, should also be addressed through other technical service initiatives and outreach programs.

The action, advice, or lack of action relied upon by the borrower should also ordinarily be documented, but there may be situations where documentation is not reasonably available (for example, where the interaction with FSA was verbal). In those situations, the FSA official with authority to grant equitable relief may determine that contemporaneous documentation is not necessary. A lack of documentation on its own should not be held against the borrower. All determinations of equitable relief, however, must be documented with an explanation of the determining official's basis for providing that relief.

Impacted borrowers may be required to assist in the resolution of the noncompliance, provided the borrower agrees that these actions are not detrimental to the long-term viability of the borrower's operation; by taking such actions as partially repaying debt, disposing of assets, changing operation or entity structure, and other necessary actions to return to compliance and or eligibility. The 2018 Farm Bill also specifies that equitable relief decisions are not subject to appeal or judicial review.

Certified Mediation Program

Section 5402 of the 2018 Farm Bill amends section 501(c) of the Agricultural Credit Act of 1987 (7 U.S.C. 5101(c)) to expand the scope of issues for which mediation may be provided.

Section 5402(a)(1)(A)(ii) of the 2018 Farm Bill provides that in addition to compliance with farm programs and conservation programs, national organic program issues may now be mediated. Under the existing regulation, the Certified Mediation Program may mediate pesticide use issues that fall under the jurisdiction of USDA; this has not changed as a result of the 2018 Farm Bill. Under the 2018 Farm Bill's new provision, issues involving pesticide use may be a covered issue for mediation when it involves organic producers outside of USDA programs. In addition, organic certification-related disputes with the local agencies that USDA has accredited to provide the certification may also be eligible for mediation.

Section 5402(a)(1)(A)(iii) of the 2018 Farm Bill provides that lease issues, including land and equipment leases, may be issues covered by mediation programs. As leasing is a common farm practice, disputes can and do occur between farmers and their landlords or lessors. Increased restrictions in agricultural leases or the loss of a lease can have negative impacts on a farm's viability. Mediation may help resolve disputes at the early stages and enable farmers to retain land or property under their leases.

Section 5402(a)(1)(A)(iii) of the 2018 Farm Bill also includes family farm transition as an issue for which mediation services may be provided. Farm families are frequently involved in transition issues, which may include land division, asset and debt distribution, individual and business responsibility for repayment of farm loans, farm viability, managing interests and responsibilities of off-farm heirs, and intergenerational conflict and responsibilities. Unresolved family conflicts often complicate the process when FSA is considering making loans to an operation as well as taking loan servicing actions. Using mediation to resolve farm transition disputes has the potential to keep farms viable. Resolving such disputes and developing a sound business plan helps both FSA and the farmers, as FSA or other creditors may make loans and help keep farmers in compliance with loan or other program requirements.

Section 5402(a)(1)(A)(iii) of the 2018 Farm Bill further provides that mediation may be used to help resolve farmer-neighbor conflicts. As rural areas are developed, farmers are being increasingly faced with neighbors who are unfamiliar with, and at times unsympathetic to, typical and essential farming practices. Neighbors might complain about a farm's noise, hours, dust, pesticide application, manure management, odors, and runoff. Conflicts may also occur with municipal ordinances, for example fence height limits, impervious cover limitations, and prohibitions on specific farming activities. Such disputes may escalate into conflicts involving multiple stakeholders that can result in legal fees, which may have a negative impact on a farm's viability and ability to access credit and pay debts.

Section 5402(a)(1)(A)(iii) of the 2018 Farm Bill provides for mediation of such other issues as the USDA Secretary or head of a State Department of Agriculture of each participating State considers appropriate for better serving the agricultural community and persons eligible for mediation. This rule, therefore, amends 7 CFR 785.3 to provide

that the list of additional issues to be mediated will be included in the certification and recertification request.

Section 5402(a)(1)(B) of the 2018 Farm Bill provides that mediation grant funding may be used to provide credit counseling to covered persons before the initiation of mediation for issues involving USDA or for issues unrelated to any ongoing dispute or mediation in which the USDA is a party.

Further, section 5402(a)(2)(C) of the 2018 Farm Bill expanded the universe of eligible persons to include any other person involved in an issue for which mediation services are provided by a Certified Mediation Program. The current definition provides that producers, their creditors (as applicable), and other persons directly affected by certain actions of USDA are considered “covered persons.” This rule, therefore, amends 7 CFR 785.2 to revise the definition of “covered persons.”

This rule also amends 7 CFR 785.4(c) introductory text and (c)(1) to provide that grant funds may be used for allowable costs in mediating covered issues for covered persons. This rule amends the list of the covered issues in 7 CFR 785.4(d) to reflect the additions made by the 2018 Farm Bill.

In addition, a correction is being made in § 785.4(c); the reference to § 785.3(b)(2) is being corrected to § 785.3(a)(2), and in the introductory text in § 785.9, the reference to 2 CFR 200.333 is being corrected to 2 CFR 200.334. Also, in § 785.9, the recordkeeping requirement is being changed from 5 years to 3 years because that is standard for the Federal Government records. For consistency, edits are being made throughout 7 CFR part 785 for references to the Certified Mediation Program.

Dishonored Payment Fee

FSA is adding new section 7 CFR 761.11 to add a penalty fee for payments made by monetary instruments, such as checks, that are later dishonored by the payer’s

financial institution. Payments made to FSA that are later dishonored result in increased burdens on FSA payment system and the staff to make accounting corrections, notify borrowers, and reprocess payments. FSA will follow the U.S. Treasury statutory determination in 26 U.S.C. 6657. By making this revision, FSA will offset some of the cost associated with returned checks and anticipates that it will serve as a deterrent against future infractions.

Remove Cash as an Acceptable Form of Payment

FSA is revising its Direct Loan Servicing regulations to remove references to cash payments as it will no longer accept cash as a form of payment on loans. This change will ensure borrower accounts are correctly credited for submitted payments since FSA payment systems are not designed to accept cash payments. In addition, the current process for cash payments is inefficient. Currently cash payments involve a two-step process. Employees have to travel to a financial institution to obtain a money order or cashier's check and then have that money order or cashier's check used for payment processing, resulting in risk or additional risk of loss when using paper-based money for employees and customers from, for example, improper handling and human error. The regulatory change will require that borrowers provide FSA with a form of payment that can be correctly and immediately processed into FSA's payment system. FSA has analyzed the change to cash and determined that this change will result in minimal impact on customers, will save time and expense, eliminate risk, and is consistent with many electronic commerce initiatives being implemented throughout USDA.

The change is consistent with the U.S. Department of the Treasury's requirement to accept electronic payments and to meet Federal cash-management laws (see U.S. Treasury Bulletin No. 2017-12).

This rule amends 7 CFR 765.151, 765.152, and 765.155, and 766.355 to remove the term cash.

Maximum Interest Rates

The regulations in 7 CFR 762.124 specify the interest rate rules governing guaranteed loan program loans. Prior to this rule, the regulation allowed lenders to charge a maximum interest rate at loan closing or restructuring no greater than the 3-month LIBOR for loans with rates fixed less than 5-years, or the 5-year Treasury note rate for loans with rates fixed for 5 or more years, plus an allowable markup.² FSA had also included an alternative method for lenders using a risk-based pricing model. These lenders were allowed to charge a rate no greater than the rate one risk tier lower than the borrower would qualify for without a guarantee.

In July 2017, the U.K. Financial Conduct Authority announced they would phase out LIBOR interest rates, ending publication in December 2021. Since 7 CFR 762.124 specifically included LIBOR as a rate that guaranteed loans may not exceed, FSA is amending § 762.124 to allow for a replacement rate comparison.

FSA monitors the interest rates charged on its loans monthly, comparing closed loans' rates to the LIBOR and Treasury thresholds. Historically, very few loans have been closed with an interest rate at or near the maximum rates allowed, regardless of the interest rate method the respective lenders operated under.

FSA will replace use of the 3-month LIBOR rate with the Secured Overnight Financing Rate (which is also known as SOFR) which was established by the industry as an alternative to LIBOR before LIBOR starts to phase out in December 2021.

FSA will continue to analyze agricultural lending pricing policies and consider any changes in industry loan pricing practices as a result of the discontinuation of LIBOR, lender pricing practices, economic shocks, and financial market changes. Based on this analysis, FSA will determine appropriate short-term maximum interest rates going

²There are two maximum interest rates that depend on the length of the loan – one is for shorter term loans and the other is for longer term loans. The maximum interest rates are set using a base rate plus an allowable markup.

forward, whether using SOFR or another rate, and will post them on the FSA website. FSA does not plan to make any changes to the use of the 5-year Treasury rate basis plus markup for longer term loans. In order to be flexible in response to changes in financial markets and other related factors and to ensure the best rates are used to benefit borrowers and lenders to ensure the success of the farm loans, we have determined that the maximum interest rates are more appropriately announced through the FSA website instead of specifying the specific indexes that are being used by FSA in the regulation.

FSA's intent with this rule is not to reduce the rate charged to guaranteed loan borrowers, or to reduce lender's profit margin on loans. Rather, the purpose of this rule change is to simplify maximum interest rate compliance for both lenders and FSA's staff. FSA's intent is to select a replacement rate as close to the current LIBOR rates as possible to minimize any impact on lenders and guaranteed loan borrowers.

There has also been a concern from FSA staff and lenders about the effectiveness of the risk-based pricing method in the regulation. FSA included it as an alternative method to establish a maximum interest rate for lenders using a formal risk-based pricing method. FSA added the option to the regulation in 2013; both the agency and lenders have had difficulty in trying to use the option, as explained below.

There are multiple approaches that lenders use to implement risk-based pricing and many are more complex than the simple tier system envisioned when this method was added to the regulation. Lender policies include other factors beyond loan risk. Many include separate tiers for default risk and loss risk, allow for considerable analyst judgement using subjective factors, and may allow exceptions to policies based on local market competition.

Lenders have also expressed frustration with the risk-based pricing method in the regulation. Many are reluctant to share internal interest rate practices or formulas and their credit staff are not aware of the one tier better requirement, even several years later

after considerable training. As a result, lender loan narratives frequently lack a description of the interest rate tier adjustment and FSA is unable to determine at loan approval whether or not the proposed interest rate complies with FSA rules. Therefore, FSA has relied primarily on post-closing lender file reviews to confirm compliance with interest rate regulations.

This rule amends § 762.124 by removing the risk-based interest rate alternative and places all lenders under the same base rates plus allowable markup depending on the length of the loan.

Crop Insurance Violations

FSA is adding a paragraph to § 762.120 to clarify that guaranteed loan applicants must not be ineligible for assistance due to disqualification resulting from a Federal Crop Insurance violation according to 7 CFR part 718. This restriction already applies to FSA guaranteed loan applicants; however, FSA is adding this provision to 7 CFR 762.120 for consistency with an identical limitation in the regulations for FSA's direct loan applicants in 7 CFR 764.101(h).

Corrections

On August 9, 2021, FSA published a final rule titled "Heirs' Property Relending Program (HPRP), Improving Farm Loan Program Delivery, and Streamlining Oversight Activities" (86 FR 43381 – 43397) in which FSA replaced the outdated term "supervised credit," with the term "progression lending" or similar pro-graduation terminology.

While most references were updated, several references were inadvertently left unchanged. Therefore, the reference to "supervised credit" wherever it appears in § 761.1(c) is replaced with the term "progression lending," the reference to "supervisory agreements" is replaced with the term "progression lending plans" in § 761.102(b)(1), and the term "supervisory needs" is replaced with the term "progression lending needs" in § 761.103(a)(2).

That August 2021 final rule also amended the regulations concerning limited resource reviews in 7 CFR part 765. As a result of that change, the paragraphs in 7 CFR 766.107 and 766.108 concerning these reviews are no longer necessary and this rule is removing them.

In reviewing the regulations, FSA noticed an inconsistency that needs to be addressed to avoid confusion and reduce program delivery errors. Specifically, 7 CFR 764.40(d) specifies that title insurance or final title opinion can be waived when, among other things, the loan amount is less than \$10,000. FSA is amending the regulation to increase that amount to \$25,000.00 to be consistent with EM title requirements in 7 CFR 764.355(d) and (e).

Effective Date, Notice, and Comment

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves any specified actions, including matters related to loans. In addition, because this rule is exempt from the requirements in 5 U.S.C. 553, it is also exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The requirements for the regulatory flexibility analysis in 5 U.S.C. 603 and 604 are specifically tied to the agency being required to issue a proposed rule by section 553 or any other law, and the definition of rule in 5 U.S.C. 601 is also tied to the publication of a proposed rule.

The rule is not a major rule under Congressional Review Act. Therefore, FSA is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review.

Therefore, this rule is effective when published in the *Federal Register*.

Executive Orders 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits to loans apply to rules that are determined to be significant.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and therefore, OMB has not reviewed this rule and an analysis of costs and benefits to loans is not required under either Executive Order 12866 or 13563.

Environmental Review

This rule revises the provisions on FLP loan limits and servicing. The result of these changes will increase loan limits or improve the various loan programs and relieve some restrictions to participation or otherwise encourage participation. This rule includes changes mandated by the 2018 Farm Bill and discretionary technical amendments that are administrative in nature. All discretionary aspects of these loan actions are covered by the Categorical Exclusions in 7 CFR 799.31(b). The discretionary provisions of this action are covered by the Categorical Exclusions, found in 7 CFR 799.31(b)(2)(iii) for minor amendments or revisions to previously approved actions, and § 799.31(b)(3)(i), for the issuance of minor technical corrections to regulations. No Extraordinary Circumstances (§ 799.33) exist. As such, the implementation of the discretionary technical amendments provided in this rule does not constitute a major Federal action that

would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement for this regulatory action and this rule serves as the environmental screening documentation of the programmatic environmental compliance decision for this Federal action.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 are to be exhausted.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” The Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

USDA has assessed the impact of this rule on Indian Tribes and determined that this rule has Tribal implications that required Tribal consultation under Executive Order 13175. Tribal consultation for this rule was included in the 2018 Farm Bill consultation held on May 1, 2019, at the National Museum of the American Indian, in Washington, DC. The portion of the Tribal Consultation relative to this rule was conducted by USDA Farm Production and Conservation mission area, as part of the Title V session. There

were no specific comments from Tribes on this rule during Tribal consultation. If a Tribe requests additional comments, FSA will work with the Office of Tribal Relations to ensure meaningful consultation is provided for modifications identified in this rule that are not expressly mandated by legislation.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates under the regulatory provisions of Title II for State, local, or Tribal governments, or private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Programs

The title and number of the Federal assistance programs, listed in the Catalog of Federal Domestic Assistance, to which this rule applies are:

10.099 Conservation Loans;

10.404 Emergency Loans;

10.406 Farm Operating Loans;

10.407 Farm Ownership Loans.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), this rule does not change the approved information collection under OMB control numbers 0560-0155, 0560-0233, 0560-0236, 0560-0237, 0560-0238 and 0560-0230.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and TTY) or (844) 433-2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or email: OAC@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

List of Subjects

7 CFR Part 761

Accounting, Loan programs-agriculture, Rural areas.

7 CFR Part 762

Agriculture, Banks, Banking, Credit, Loan programs – agriculture.

7 CFR Part 764

Agriculture, Credit, Loan programs – agriculture.

7 CFR Part 765

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs – agriculture.

7 CFR Part 766

Agriculture, Agricultural commodities, Credit, Livestock, Loan programs – agriculture.

7 CFR Part 768

Agriculture, Credit, Loan programs-agriculture.

7 CFR Part 785

Agriculture, Federal - state relations, Grant programs – intergovernmental relations, Mediation programs.

For the reasons discussed above, FSA amends 7 CFR parts 761, 762, 764, 765, 766, 768, and 785 as follows:

PART 761 – FARM LOAN PROGRAMS; GENERAL PROGRAM ADMINISTRATION

1. The authority citation for part 761 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A – General Provisions

§ 761.1 [Amended]

2. In § 761.1(c), remove “Parts 761 through 767” and “supervised credit” wherever they appear and add “This part and parts 762 through 767 of this subchapter” and “progression lending” in their places, respectively.

3. Amend § 761.2(b) as follows:

a. Add the definition of “Equitable relief” in alphabetical order; and

b. In the definition of “Veteran farmer”:

i. Redesignate paragraphs (1) and (2) as paragraphs (i) and (ii);

ii. In newly redesignated paragraph (i):

A. Remove the word “has” and add “Has” in its place; and

B. Remove the word “or”; and

iii. In newly redesignated paragraph (ii), remove “has” and the period at the end and add “Has” and “; or” in their places, respectively; and

iv. Add paragraph (iii).

The additions read as follows:

§ 761.2 Abbreviations and definitions.

* * * * *

(b) * * *

Equitable relief means waiving a requirement for Direct Farm Ownership, Direct Farm Operating, or Direct Emergency loans when the borrower is not in compliance with loan program requirements, but acted in good faith and relied on a material action, advice, or non-action from an Agency official to the detriment of the borrower’s operation.

* * * * *

Veteran farmer * * *

(iii) Is a veteran who served in the active military, naval, or air service, and who was discharged or released from that service under conditions other than dishonorable and who first obtained status as a veteran during the most recent 10-year period.

* * * *

§ 761.8 [Amended]

4. Amend § 761.8 as follows:

a. In paragraph (a)(1)(i), remove the dollar amount “\$300,000” and add “\$600,000” in its place;

b. In paragraphs (a)(1)(ii) and (iii), remove “\$700,000” and “2000” and add “\$1,750,000” and “2019” in their places, respectively;

c. In paragraph (a)(2)(i), remove the dollar amount “\$300,000” and add “\$400,000” in its place;

d. In paragraphs (a)(2)(ii) and (iii) and (a)(3), remove “\$700,000” and “2000” and add “\$1,750,000” and “2019” in their places, respectively;

e. In paragraph (a)(4), remove the dollar amount “\$300,000” and add “\$600,000” in its place; and

f. In paragraph (a)(6), remove “guaranteed Farm Ownership” and “\$800,000” and add “guaranteed Farm Ownership loan” and “\$1,100,000” in their places, respectively.

5. Add § 761.11 to read as follows:

§ 761.11 Dishonored payment fee.

(a) The Agency will charge a fee for payment transactions that are returned for insufficient funds.

(b) [Reserved]

Subpart C – Progression Lending

6. In § 761.102, revise the section heading and paragraph (b)(1) to read as follows:

§761.102 Borrower recordkeeping and reporting.

* * * * *

(b) * * *

(1) Cooperate with the Agency and comply with all progression lending plans, farm assessments, farm operating plans, year-end analyses, and all other loan-related requirements and documents;

* * * * *

§ 761.103 [Amended]

7. In § 761.103(a)(2), remove the word “supervisory” and add “progression lending” in its place.

PART 762 – GUARANTEED FARM LOANS

8. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

9. In § 762.120, add paragraph (o) to read as follows:

§ 762.120 Applicant eligibility.

* * * * *

(o) *Disqualification.* The applicant, and all entity members in the case of an entity, must not be ineligible due to disqualification resulting from a Federal Crop Insurance violation, according to 7 CFR part 718.

§ 762.124 [Amended]

10. Amend § 762.124 as follows:

a. In paragraph (a)(3) introductory text, remove the words “the following, as applicable:” and adding “the rates established and announced by the Agency on the FSA website (www.fsa.usda.gov).”;

b. Remove paragraphs (a)(3)(i) through (iii); and

c. Remove paragraph (a)(4) and redesignate paragraphs (a)(5) and (6) as paragraphs (a)(4) and (5).

11. Amend § 762.129 as follows:

a. Revise paragraph (b)(1); and

b. In paragraph (b)(2)(i), remove the acronym “SDA” and add “socially disadvantaged” in its place.

The revision reads as follows:

§ 762.129 Percent of guarantee and maximum loss.

* * * * *

(b) * * *

(1) For OLs and FOs, the guarantee will be issued at 95 percent when:

(i) The sole purpose of a guaranteed FO or OL is to refinance an Agency direct farm loan and when only a portion of the loan is used to refinance a direct Agency loan, a weighted percentage of a guarantee will be provided;

(ii) The purpose of a guaranteed FO is to participate in the down payment loan program;

(iii) A guaranteed OL is made to a farmer who is participating in the Agency's down payment loan program. The guaranteed OL must be made during the period that a borrower has the down payment loan outstanding;

(iv) A guaranteed OL is made to a farmer whose farm land is subject to the jurisdiction of an Indian tribe and whose loan is secured by one or more security instruments that are subject to the jurisdiction of an Indian tribe;

(v) A guaranteed FO or OL is made to a qualified socially disadvantaged farmer;
or

(vi) A guaranteed FO or OL is made to a qualified beginning farmer.

* * * * *

§ 762.130 [Amended]

12. In § 762.130(d)(4)(iii)(C), remove the words “beginning or socially disadvantaged” and adding “beginning, socially disadvantaged, or veteran” in their place.

PART 764 – DIRECT LOAN MAKING

13. The authority citation for part 764 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart D – Farm Ownership Loan Program

14. In § 764.152, revise the section heading and paragraph (d) to read as follows:

§ 764.152 General eligibility requirements.

* * * * *

(d) And in the case of an entity, one or more members constituting a majority interest, must have participated in the business operations of a farm for at least 3 years out of the 10 years prior to the date the application is submitted.

(1) The following experiences can substitute for up to 2 of the 3 years:

(i) Not less than 16 credit hours of post-secondary education in an agriculture-related field;

(ii) Successful completion of a farm management curriculum offered by a cooperative extension service, community college, adult vocational agriculture program, non-profit organization, or land-grant college or university;

(iii) One (1)-year experience as a farm laborer with substantial management responsibility;

(iv) Successful completion of an internship, mentorship, or apprenticeship in day-to-day farm management;

(v) Significant business management experience;

(vi) Honorable discharge from the armed forces of the United States;

(vii) Successful repayment of an FSA financed youth loan; or

(viii) Established relationship with a counselor in the Service Corps of Retired Executives (SCORE) program who has experience in farming or ranching, or with Agency-approved local individuals or organizations that are committed to providing mentorship in farming or ranching; or

(2) The 3-year requirement in this paragraph (d) will be waived if the applicant meets the requirements of both paragraphs (d)(1)(iii) and (viii) of this section.

* * * * *

Subpart E – Downpayment Loan Program

§ 764.201 [Amended]

15. In § 764.201, remove the words “beginning farmer or socially disadvantaged” and adding “beginning farmer, socially disadvantaged farmer, or veteran farmer” in their place.

16. In § 764.202, revise paragraph (b) to read as follows:

§ 764.202 Eligibility requirements.

* * * * *

(b) Be a beginning farmer, socially disadvantaged farmer, or veteran farmer.

Subpart I – Emergency Loan Program

17. Amend § 764.352 as follows:

a. In paragraphs (a) and (b), remove the semicolon and add a period in its place;

b. In paragraph (c)(3)(i), remove the semicolon and add “; and” in its place;

c. In paragraphs (c)(3)(ii), (d), and (e)(3) and (4), remove the semicolon and add a period in its place; and

d. Revise paragraph (f).

The revision reads as follows:

§ 764.352 Eligibility requirements.

* * * * *

(f) And all entity members in the case of an entity, must not have received debt forgiveness from the Agency on more than one occasion on or before April 4, 1996, or any time after April 4, 1996. A write down associated with a restructuring action under Section 353 of the Act is not considered debt forgiveness for EM Loan purposes.

* * * * *

Subpart J – Loan Decision and Closing

§ 764.402 [Amended]

18. In § 764.402(d)(1)(i), remove the dollar amount “\$10,000” and add “\$25,000” in its place.

PART 765 – DIRECT LOAN SERVICING - REGULAR

19. The authority citation for part 765 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart D – Borrower Payments

20. In § 765.151, revise paragraph (a) to read as follows:

§ 765.151 Handling payments.

(a) *Borrower payments.* Borrowers must submit their loan payments in a form acceptable to the Agency, such as checks and money orders. Forms of payment not acceptable to the Agency include, but are not limited to, cash, foreign currency, foreign checks, and sight drafts.

* * * * *

§ 765.152 [Amended]

21. In § 765.152(b)(4), remove the words “Cash proceeds” and adding “Proceeds” in their place.

§765.155 [Amended]

22. In §765.155, remove paragraph (a)(1)(i) and redesignate paragraphs (a)(1)(ii) through (iv) as paragraphs (a)(1)(i) through (iii).

PART 766 - DIRECT LOAN SERVICING-SPECIAL

23. The authority citation for part 766 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 1981d(c).

Subpart C – Loan Servicing Programs

§ 766.107 [Amended]

24. In § 766.107, remove paragraph (d)(4).

§ 766.108 [Amended]

25. In § 766.108, remove paragraph (c)(4) and redesignate paragraph (c)(5) as paragraph (c)(4).

Subpart H – Loan Liquidation

26. In § 766.355, revise paragraph (c)(1) to read as follows:

§ 766.355 Acceleration of loans.

* * * * *

(c) * * *

(1) Pay the account in full;

* * * * *

27. Add part 768, consisting of §§ 768.1 and 768.2, to read as follows:

PART 768 – EQUITABLE RELIEF

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 768.1 Providing equitable relief.

(a) If the Farm Service Agency (Agency or FSA) determines that a borrower is not in compliance with Agency loan requirements in this chapter, the Agency may consider equitable relief as specified in this section:

(1) *Requirements.* After determination that a borrower is in noncompliance with loan program requirements in this chapter, the Agency may provide equitable relief to a borrower if it is determined that the borrower:

(i) Acted in good faith; and

(ii) Relied on a material action, advice, or non-action from an Agency official to the detriment of the borrower's operation or the action approved by the Agency official resulted in the borrower becoming noncompliant with the loan program requirements in this chapter.

(2) *Determination.* The material action, advice, or response from an Agency official under paragraph (a)(1) of this section must be documented, unless the Agency official with authority to grant equitable relief determines that documentation is not reasonably available. Notwithstanding any delegations in this chapter, only the Secretary, FSA Administrator, Deputy Administrator for Farm Loan Programs, or any other official within U.S. Department of Agriculture (USDA) specifically designated by the Secretary, may make the determination for the Agency to grant equitable relief and must document the basis for that determination.

(3) *Relief.* If the borrower meets the requirements in paragraph (a)(1) of this section, the Agency may provide to a borrower either or both of the following forms of equitable relief:

(i) The borrower may choose to keep loans at current rates or other terms received in association with the loan which was determined to be noncompliant; or

(ii) The borrower may receive other equitable relief for the loan as the Agency determines to be appropriate.

(4) *Conditions.* As a condition of receiving relief, the Agency may require the borrower to take actions to remedy the noncompliance, provided the borrower agrees those actions do not adversely affect the long-term viability of the borrower's operation.

(b) A determination or action of the Agency under this section is final and not subject to administrative appeal or judicial review.

§ 768.2 [Reserved]

PART 785 – CERTIFIED MEDIATION PROGRAM

28. The authority citation for part 785 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 7 U.S.C. 5101-5104.

29. Revise the heading for part 785 to read as set forth above.

§ 785.1 [Amended]

30. Amend § 785.1 as follows:

a. In paragraph (b), remove “USDA”, “certified State mediation program”, “State’s certified mediation program”, and “appeals regulations” and add “U.S. Department of Agriculture (USDA)”, “Certified Mediation Program”, “State’s Certified Mediation Program”, “appeals regulations in this chapter” in their places, respectively;

b. In paragraph (d), remove the words “program certified” and add “Certified Mediation Program” in their place; and

c. In paragraph (e), remove the words “program certified” and “This provision” and add “Certified Mediation Program” and “This paragraph (e)” in their places, respectively.

31. Amend § 785.2 as follows:

a. Remove the definition for “Certified State mediation program” and add the definition for “Certified Mediation Program” in its place;

b. Revise the definition of “Covered persons”;

c. In the definition for “Mediation services”, remove the words “State mediation program” and add “Certified Mediation Program” in their place; and

d. In the definition for “Qualifying State”, remove the words “State mediation program” and add “Certified Mediation Program” in their place.

The addition and revision read as follows:

§ 785.2 Definitions.

* * * * *

Certified Mediation Program means a program providing mediation services that has been certified in accordance with § 785.3.

* * * * *

Covered persons means agricultural producers, their creditors (as applicable), persons directly affected by actions of the USDA, and any other persons involved in covered issues under § 785.4(d); for which mediation services are provided by a Certified Mediation Program.

* * * * *

32. In § 785.3, revise the section heading, the introductory text, and paragraphs (a) introductory text and (a)(2)(vi) to read as follows:

§ 785.3 Annual certification of a State’s Certified Mediation Program.

To obtain certification from FSA for the Certified Mediation Program, the State must meet the requirements of this section.

(a) *New request for certification.* A new request for certification of a State mediation program must include descriptive and supporting information regarding the mediation program and a certification that the mediation program meets certain requirements as prescribed in this section. If a State is also qualifying its mediation program to request a grant of Federal funds under the Certified Mediation Program, the State must submit with its request for certification additional information as specified in § 785.4.

* * * * *

(2) * * *

(vi) That the State's Certified Mediation Program ensures, in the case of other issues covered by the Certified Mediation Program, that:

(A) USDA receives adequate notification of those issues by the deadline specified in § 785.6(a)(1); and

(B) Persons directly affected by actions of USDA receive adequate notification of the Certified Mediation Program; and

* * * * *

33. Amend § 785.4 as follows:

a. Revise the section heading;

b. In paragraph (a) introductory text, remove the words "State mediation program" and add "State's Certified Mediation Program" in their place;

c. In paragraph (b)(1), remove the words "in any FSA office and on the Internet," and add "at" in their place;

d. Revise paragraph (b)(2);

e. Revise paragraphs (c) introductory text, (c)(1) introductory text, and (c)(2)(iv); and

f. Add paragraph (d).

The revisions and addition read as follows:

§ 785.4 Grants to States with a Certified Mediation Program.

* * * * *

(b) * * *

(2) A budget with supporting details providing estimates of the cost of operation and administration of the Certified Mediation Program. Proposed direct expenditures

will be grouped in the categories of allowable direct costs under the Certified Mediation Program as specified in paragraph (c)(1) of this section;

* * * * *

(c) *Grant purposes.* Grants made under this part will be used only to pay the allowable costs of operation and administration of the components of a qualifying State's Certified Mediation Program that have been certified as specified in § 785.3(a)(2). Costs of services other than mediation services to covered issues and covered persons within the State are not considered part of the cost of operation and administration of the Certified Mediation Program for the purpose of determining the amount of a grant award.

(1) *Allowable costs.* Subject to applicable cost principles in 2 CFR part 200, subpart E, allowable costs for operations and administration are limited to those that are reasonable and necessary to carry out the State's Certified Mediation Program in providing mediation services for covered issues and covered persons within the State. Specific categories of costs allowable under the State's Certified Mediation Program include, and are limited to:

* * * * *

(2) * * *

(iv) Services provided by a State's Certified Mediation Program that are not consistent with the features of the Certified Mediation Program as specified in this part including advocacy services on behalf of a mediation participant, such as representation of a mediation client before an administrative appeals entity of the USDA or other Federal Government department or Federal or State Court proceeding.

(d) *Covered issues.* Covered issues include:

(1) Agricultural loans, regardless of whether the loans are made or guaranteed by USDA or made by a third party – mediation services must be provided; and

(2) The following issues for which mediation services may be provided to covered persons that are involved in one or more of the following:

- (i) Wetlands determinations;
- (ii) Compliance with farm programs, conservation programs, and the National Organic Program established under the Organic Foods Production Act of 1990;
- (iii) Rural water loan programs;
- (iv) Grazing on National Forest System lands;
- (v) Pesticides;
- (vi) Lease issues, including land leases and equipment leases;
- (vii) Family farm transition;
- (viii) Farmer-neighbor disputes;
- (ix) Such other issues as the Secretary or the head of the Department of Agriculture of each participating State considers appropriate for better serving the agricultural community and persons eligible for mediation; or
- (x) Credit counseling:
 - (A) Prior to the initiation of any mediation involving the USDA; or
 - (B) Unrelated to any ongoing dispute or mediation in which the USDA is a party.

33. Revise § 785.5 to read as follows:

§ 785.5 Fees for mediation services.

A requirement that non-USDA parties who elect to participate in mediation pay a fee for mediation services will not preclude certification of a State's mediation program or its eligibility for a grant; however, if participation in mediation is mandatory for a USDA agency, a State's Certified Mediation Program may not require the USDA agency to pay a fee to participate in a mediation.

34. In § 785.6, revise paragraph (a)(3) to read as follows:

§ 785.6 Deadlines and address.

(a) * * *

(3) *Requests for additional grant funds during a fiscal year.* Any request by a State's Certified Mediation Program, that is eligible for grant funding as of the beginning of the fiscal year, for additional grant funds during that fiscal year for additional, unbudgeted demands for mediation services must be submitted on or before March 1 of the fiscal year.

* * * * *

35. Amend § 785.7 as follows:

- a. In paragraph (a), remove the words “certified State mediation program” and add “State's Certified Mediation Program” in their place;
- b. In paragraph (b)(3) introductory text, remove the words “State program” and add “State's Certified Mediation Program” in their place;
- c. Revise paragraph (c)(1);
- d. In paragraph (c)(2), remove the words “certified State mediation program” and add “State's Certified Mediation Program” in their place;
- e. In paragraph (d)(1)(iii), remove the words “certified State mediation programs” and add “Certified Mediation Program” in their place; and
- f. Revise paragraph (e)(1).

The revisions read as follows:

§ 785.7 Distribution of Federal grant funds.

* * * * *

(c) * * *

(1) Grant funds will be paid in advance, in installments throughout the Federal fiscal year as requested by a State's Certified Mediation Program and approved by FSA.

The initial payment to a Certified Mediation Program in a qualifying State eligible for grant funding as of the beginning of a fiscal year will represent at least one-fourth of the State's annual grant award. The initial payment will be made as soon as practicable after certification, or re-certification, after grant funds are appropriated and available.

* * * * *

(e) * * *

(1) States receiving Certified Mediation Program grant funds are encouraged to obligate award funds within the Federal fiscal year of the award. A State may, however, carry forward any funds disbursed to its Certified Mediation Program that remain unobligated at the end of the fiscal year of award for use in the next fiscal year for costs resulting from obligations in the subsequent funding period. Any carryover balances plus any additional obligated fiscal year grant will not exceed the lesser of 70 percent of the State's budgeted allowable costs of operation and administration of the State's Certified Mediation Program for the subsequent fiscal year, or \$500,000.

* * * * *

36. Amend § 785.8 as follows:

- a. Revise paragraph (a) introductory text;
- b. In paragraphs (a)(1) introductory text and (a)(1)(i), remove the words “certified State mediation program” and add “State’s Certified Mediation Program” in their place;
- c. In paragraph (a)(2) introductory text, remove the words “certified mediation program” and add “State’s Certified Mediation Program” in their place; and
- d. In paragraph (a)(2)(ii)(B), remove the word “certified”.

The revision reads as follows:

§ 785.8 Reports by qualifying States receiving mediation grant funds.

(a) *Annual report by the State on its Certified Mediation Program.* No later than 30 days following the end of a fiscal year during which a qualifying State received a grant award under this part, the State must submit to the Administrator an annual report on its Certified Mediation Program. The annual report must include the following:

* * * * *

37. In § 785.9, revise the introductory text and paragraph (c) to read as follows:

§ 785.9 Access to program records.

The regulations in 2 CFR 200.334 through 200.338 provide general record retention and access requirements for records pertaining to grants. In addition, the State must maintain and provide the Government access to pertinent records regarding services delivered by the State's Certified Mediation Program for purposes of evaluation, audit and monitoring of the State Certified Mediation Program as follows:

* * * * *

(c) All participants in a mediation must sign and date an acknowledgment of receipt of such notice from the mediator. The State's Certified Mediation Program must maintain originals of such acknowledgments in its mediation files for at least 3 years.

38. In § 785.10, revise paragraphs (a) introductory text, (a)(1), (2), and (5), and (b) to read as follows:

§ 785.10 Penalty for non-compliance.

(a) The Administrator is authorized to withdraw the certification of a State's Certified Mediation Program, terminate or suspend the grant to the State's Certified Mediation Program, require a return of unspent grant funds, a reimbursement of grant funds on account of expenditures that are not allowed, and may impose any other penalties or sanctions authorized by law if the Administrator determines that:

(1) The State's Certified Mediation Program, at any time, does not meet the requirements in this part for certification;

(2) The State's Certified Mediation Program is not being operated in a manner consistent with the features of the program as certified by FSA, with the regulations in this part, or the grant agreement;

* * * * *

(5) Reports submitted by a State on its Certified Mediation Program as required by § 785.8 are false, contain misrepresentations or material omissions, or are otherwise misleading.

(b) In the event that FSA gives notice to the State of its intent to enforce any withdrawal of certification or other penalty for non-compliance, USDA agencies will cease to participate in any mediation conducted by the State's Certified Mediation Program immediately upon delivery of such notice to the State.

§ 785.11 [Amended]

39. In § 785.11, remove the words “State mediation program” and adding “State’s Certified Mediation Program” in their place wherever they appear.

§ 785.12 [Amended]

40. In § 785.12, remove the cross reference “parts 15, 15b and 1901, subpart E, of” and adding “parts 15 and 15b of” in their place.

Zach Ducheneaux,
Administrator,
Farm Service Agency.

[FR Doc. 2022-04858 Filed: 3/8/2022 8:45 am; Publication Date: 3/9/2022]